

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

AUG 20 1985

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Honorable Mary Zoghby
Member, House of Representatives
House District 97
2862 Hilburn Drive
Mobile, Alabama 36606

Department of Corrections - Work
Release - Prisons and Prisoners -
Public Records

The records of the Department of
Corrections are public information
with certain exceptions.

Dear Representative Zoghby:

The Attorney General is in receipt of your recent request for any opinion concerning the confidentiality of work release rosters and other records maintained by the Alabama Department of Corrections.

Section 41-13-1 Code of Alabama 1975, defines public records as:

...the term "public records" shall include all written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public offices of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court office, or officer.

Section 36-12-40 grants to every citizen:

...a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.

While several state statutes require the Department of Corrections to maintain records, no statute states that the records are per se protected from public disclosure.

The Alabama Supreme Court in Stone v. Consolidated Publishing Company, 404 So.2d 678 (1981) addressed the definition of public writing and the rights of citizens of this state to inspect public writings. The Court held that a public writing:

is such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens. Stone, supra, at 681.

The Court went further and held:

this is not to say, however, that any time a public official keeps a record, though not required by law, falls within the purview of Section 36-12-40. Stone, supra, at 681.

The Court in Stone clearly believed that while legislative assistance in clearing up this area would be of great benefit a rule of reason must be adopted by the judicial branch of government in determining what is public and what is not.

In adopting that rule of reason the Court specifically enumerated certain records that constituted "some" of the areas that may not be subject to public disclosure. Those specific enumerations included:

...information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interest of the public...Stone, supra, at 681.

The Court held that it was required:

to balance the interest of the citizens in knowing what their public officers are doing and the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference (citation omitted) Stone, supra, at 681.

An application of the Alabama statutes and the Alabama Supreme Court holding in Stone leads to the inescapable conclusion that work release rosters are public information and should be available for inspection and copying by members of the public. It is the opinion of the Attorney General that the work release roster including the inmate's name, the specific location of the inmate, the inmate's place of employment, and the crime for which the inmate is incarcerated is clearly public information. It is also the opinion of the Attorney General that certain other information concerning inmates in the correctional institutions of this State should not be public information. Examples of this information which should not be public includes but is not limited to psychological profiles, information received in confidence from law enforcement agencies and other information which clear public policy dictates should be maintained in confidence or that other statutes require to remain confidential. [See Opinion of the Attorney General to Robert Britton dated April 8, 1980, Opinion of the Attorney General to John Hodnett dated April 21, 1983.]

It is the opinion of the Attorney General that no useful public purpose is served by preventing citizens in a particular community from knowing what work release inmates are housed in their communities and what crimes those inmates have been convicted of.

While it is the Attorney General's opinion that the above enumerated information is deemed to be available to the public, the Department of Corrections is entitled to establish some orderly procedure for providing this information to the public. This procedure should not be calculated to intimidate or make so complicated a request for public information so as to effectively prevent its disclosure. The Department of Corrections is also entitled to receive a

Hon. Mary Zoghby
Page Four

nominal fee for the reproduction of any requested information. [See Opinion of the Attorney General to Rebecca Beasley dated August 25, 1981.] It is the opinion of the Attorney General that strong public policy favors the disclosure of public records and yet while this public policy has been modified by numerous acts of the Legislature that prevent the disclosure of certain information to the public, i.e., the Youthful Offender Act [See Opinion of the Attorney General to Brian Dowling dated September 7, 1984], the general rule is that public records are to be made available to the public. It is the opinion of the Attorney General that persons seeking the disclosure of information should cooperate with state agencies in receiving that information in such a manner so as to provide the information that is, in fact, public and to not unnecessarily impede the efficient operation of the business of that agency.

We hope that we have fully and completely answered your question and if we may provide you with further information please feel free to contact us at any time.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By:



RICHARD N. MEADOWS
Assistant Attorney General

CAG:RNM:mth